

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Application of

757 CORPORATION

for revision or refund of franchise
tax under Article 9A of the Tax Law
for the fiscal year ended October 31,
1963.

Hearing Case No. 3743

The taxpayer computed and paid a tax of \$3,757.49, based on
total capital of \$3,757,485.81 at the rate of 1 Mill.

A timely application was filed on January 20, 1965.

The taxpayer is claiming that since it was not personally liable
on the average mortgage liability of \$4,195,000.00, it was permissible to
deduct such liability in computing the tax.

The taxpayer's accountants, in their letter of February 8, 1965,
has furnished the following information:

The mortgage states, " * * * the mortgagee's sole
recourse hereunder shall be a foreclosure action against the
mortgaged premises, * * * the mortgagee will not seek a deficiency
or personal money judgement against the mortgagor named herein,
or any disclosed or undisclosed principal of such mortgagor, or
any past, present, or future director, officer or stockholder of
such mortgagor."

Under the term "business capital" where the taxpayer owns
property subject to a debt for which the taxpayer is not personally liable,
only the taxpayer's equity in the property, over and above the amount of
such debt, is included in business capital.

Based on the foregoing, the tax has been corrected to the minimum
of \$25.00, which will result in a refund of \$3,862.25.

It is noted that for tax periods begun January 1, 1964 the
regulations have been amended and all mortgage indebtedness will not be
allowed as a deduction in computing business capital.

Approved
James R. Macduff 2/24/65

/s/

WILLIAM F. SULLIVAN
Chairman

Approved
Ira J. Palestin
2/25/65

/s/

DONALD H. GILHOLLY